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Attorneys for Defendants Wal-Mart Stores, Inc. and Walmart.com USA LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE ONLINE DVD RENTAL
ANTITRUST LITIGATION

Master File No.: 4:09-md-2029 PJH (JCS)
MDL No. 2029

This document relates to:

Hon. Phyllis J. Hamilton

ALL ACTIONS

**STIPULATION AND [PROPOSED]
ORDER REGARDING REVISION OF
NOTICE TO THE LITIGATION AND
SETTLEMENT CLASSES**

JOINT STIPULATION

WHEREAS, the Court entered an Order on September 2, 2011 (“the Preliminary Approval Order”), requiring that notice of this class action and the proposed class settlement between Plaintiffs and defendants Wal-Mart Stores, Inc. and Walmart.com USA LLC (“Wal-Mart defendants”) be sent to the certified litigation class and the proposed settlement class of current and former Netflix, Inc. (“Netflix”) subscribers;

WHEREAS, email notice was disseminated on or about November 15, 2011 to approximately 35.3 million class members;

WHEREAS, the Preliminary Approval Order requires that the Summary Notice approved by the Court be sent by the Claims Administrator, Rust Consulting (“Rust”) via U.S. Mail to class members to whom email notice was not successfully delivered;

WHEREAS, the Long Form notice approved by the Court is posted on the Settlement/Claims Website (“Settlement Website”) hosted by Rust;

WHEREAS, the Court granted Netflix’s Motion for Summary Judgment on November 22, 2011; and

WHEREAS, Plaintiffs, the Wal-Mart defendants and Netflix believe that the Summary and Long Form Notices should be revised to reflect the Court’s granting of Netflix’s Motion for Summary Judgment.

NOW THEREFORE, the parties hereto, through their undersigned counsel, stipulate and agree as follows:

1. The Summary Notice should be revised to reflect the Court’s granting of Netflix’s Motion for Summary Judgment. The revised Summary Notice will be mailed to those class members to whom email notice was not successfully delivered. A true and correct copy of the proposed revised Summary Notice is attached as Exhibit A.

2. The Long Form Notice should be revised to reflect the Court’s granting of Netflix’s Motion for Summary Judgment. The revised Long Form Notice will be posted to the Settlement Website. A true and correct copy of the proposed revised Long Form Notice is attached as Exhibit B.

1 3. The Settlement Website should be modified to reflect the current status of the
2 litigation as described in the proposed revised Summary and Long Form Notices.

3
4 IT IS SO STIPULATED.

5
6 Dated: November 30, 2011

BAKER & HOSTETLER LLP

7
8 By: /s/ Robert G. Abrams

9 Robert G. Abrams

10 *Attorneys for Plaintiffs*

11 Dated: November 30, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

13 By: /s/ Jonathan M. Jacobson
Jonathan M. Jacobson

14 *Attorneys for Defendant Netflix, Inc.*

15
16 Dated: November 30, 2011

JONES DAY

17 By: /s/ Paula W. Render
Paula W. Render

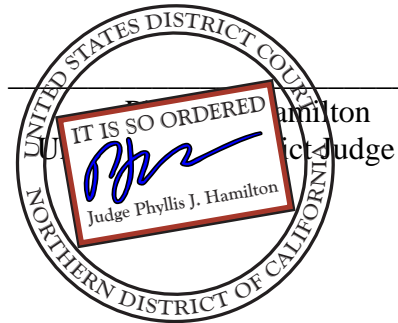
18 *Attorneys for Defendants Wal-Mart Stores, Inc.*
19 *and Walmart.com USA LLC*

[PROPOSED] ORDER

The Court has considered the foregoing stipulation between the parties. The revised Summary Notice shall be mailed to those class members to whom the email notice was not successfully delivered. The revised Long Form notice shall be posted on the Settlement Website.

In all other respects, pursuant to the foregoing stipulation, **IT IS SO ORDERED.**

Dated: December 2, 2011



DECLARATION OF CONSENT

Pursuant to General Order 45, the undersigned certifies that concurrence in the filing of the document was obtained from each of the other signatories.

Dated: November 30, 2011

By: /s/ Guido Saveri
Guido Saveri

EXHIBIT A

If You Rented Online DVDs from Netflix,

A Class Action Lawsuit And A Settlement Could Affect You.

There is a lawsuit against Wal-Mart Stores Inc. and Walmart.com USA LLC (together called "Wal-Mart") and Netflix, Inc. ("Netflix") involving the price of online DVD rentals. The Class Action seeks money for current and former Netflix online subscribers. A Settlement has been reached with Wal-Mart. Netflix and Wal-Mart believe that the lawsuit has no basis. On November 22, 2011, the Court granted Netflix's Motion for Summary Judgment, resulting in the dismissal of the lawsuit. Plaintiffs can appeal this decision.

What is the lawsuit about?

The lawsuit claims that Wal-Mart and Netflix reached an unlawful agreement under which Wal-Mart would withdraw from the online DVD rental market and Netflix would not sell new DVDs. Wal-Mart and Netflix deny that they entered into such an agreement or that they have done anything wrong, that the Plaintiffs have been harmed in any way, or that the price of online DVD rentals was raised or inflated by any agreement between Wal-Mart and Netflix.

The Litigation Class Against Netflix

Who's included in the Netflix Litigation Class? Any person or entity in the United States that paid a subscription fee to Netflix anytime from May 19, 2005 to September 30, 2010.

What are my rights in the Netflix Litigation Class?

- **Remain in the Litigation:** If you wish to remain in the Litigation, you do not need to take any action at this time.
- **Get out of the Litigation:** If you wish to keep your individual right to sue Netflix about these claims you must exclude yourself. To ask to be excluded, send a letter to the address below, postmarked by February 14, 2012, that says you want to be excluded from In re: Online DVD Rental Antitrust Litigation, MDL No. 2029. Include your name, address, and telephone number.

The Wal-Mart Settlement Class

Who's included in the Wal-Mart Settlement Class? Any person or entity living in the United States or Puerto Rico that paid a subscription fee to rent DVDs online from Netflix anytime from May 19, 2005 to September 2, 2011.

What does the Settlement provide? Wal-Mart will pay \$27,250,000, in cash and gift cards to settle the lawsuit. If you qualify, you can get a cash payment or a gift card that

can be used at www.walmart.com. The actual amount paid in cash and in gift cards depends on the total number of valid claims filed.

Class Counsel will ask the Court to award the following: (1) attorneys' fees up to 25% of the Settlement Fund, plus costs that Class Counsel estimate at up to \$1.7 million, (2) administration and notice costs, and (3) \$5,000 for each of the Class Representatives (up to \$80,000 total which could include the class representatives from cases filed in California state courts). After these fees and costs are deducted from the Settlement Fund, the remaining amount will be equally divided amongst the Wal-Mart Settlement Class Members who file valid claims.

More details are in the Settlement Agreement, which is available at www.OnlineDVDclass.com.

How to get Settlement benefits? You must submit a Claim Form to get benefits. You can submit a Claim Form online (for gift cards only) or by mail. The deadline to submit a Claim Form is **February 14, 2012**. Claim Forms are available at the website or by calling 1-877-389-4469.

What are my rights in the Wal-Mart Settlement Class?

- **Remain in the Settlement:** If you wish to remain in the Wal-Mart Settlement Class and get benefits, you need to file a claim.
- **Get out of the Settlement:** If you wish to keep your right to individually sue Wal-Mart about the claims in this case you must exclude yourself by **February 14, 2012** from **both** the Wal-Mart Settlement Class and the Netflix Litigation Class. See the instruction on how to "Get out of the Litigation" above.
- **Remain in the Wal-Mart Settlement Class and Object:** If you stay in the Wal-Mart Settlement Class you can object to it by **February 14, 2012**.

The detailed notice, available at www.OnlineDVDclass.com or by calling 1-877-389-4469, explains how to exclude yourself or object.

The Court will hold a hearing on March 14, 2012 to consider whether to approve the Settlement, and a request for attorneys' fees, costs, and expenses. If you wish, you or your own attorney may ask to appear and speak at the hearing at your own cost.

For More Information: 1-877-389-4469 www.OnlineDVDclass.com
Netflix Lawsuit, PO Box 2602, Faribault, MN 55021-9602

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If You Rented Online DVDs from Netflix, A Class Action And A Settlement With Wal-Mart May Affect You.

A federal Court authorized this Notice. This is not a solicitation from a lawyer.

- There is a lawsuit involving the price of online DVD rentals. The lawsuit claims that Wal-Mart Stores Inc. and Walmart.com USA LLC (together called “Wal-Mart”) and Netflix, Inc. (“Netflix”) entered into an agreement that caused Netflix subscribers to pay higher subscription prices. The Class Action seeks money for current and former Netflix subscribers. On November 22, 2011, the Court granted Netflix’s Motion for Summary Judgment, resulting in the dismissal of the lawsuit. Plaintiffs can appeal this decision.
- There is a Netflix Litigation Class and a Wal-Mart Settlement Class. A Settlement has been reached with Wal-Mart. Wal-Mart and Netflix believe that the lawsuit has no basis.
- Your legal rights are affected whether you act or don’t act. This Notice includes information on the Settlement and the litigation with Netflix. Please read the entire Notice carefully.

Your rights and options—and the deadlines to exercise them—are explained in this notice.	
You can file a claim for benefits from the Settlement.	<i>see</i> Question 12
You can object or comment on the Settlement.	<i>see</i> Question 14
You can go to a court hearing and ask to speak about the Settlement.	<i>see</i> Question 18
You may also exclude yourself from the Wal-Mart Settlement.	<i>see</i> Question 14
You may also exclude yourself from the litigation against Netflix.	<i>see</i> Question 6

- The Court in charge of the case still has to decide whether to approve the Settlement with Wal-Mart.

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com

WHAT THIS NOTICE CONTAINS

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3. Why is there a Settlement with Wal-Mart but the lawsuit against Netflix is continuing?
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BASIC INFORMATION

1. Why is there a notice?

You have the right to know about a lawsuit and about your legal rights and options before the Court or a jury decides whether the claims being made against Netflix have any basis and whether to approve the Wal-Mart Settlement.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is called *In re: Online DVD Rental Antitrust Litigation*, MDL No. 2029. The people who sued are called Plaintiffs, and the companies they sued, Wal-Mart Stores Inc. and Walmart.com USA LLC (together called “Wal-Mart”) and Netflix, Inc. (“Netflix”) are called the Defendants.

2. What is the lawsuit about?

The lawsuit claims that Wal-Mart and Netflix reached an unlawful agreement under which Wal-Mart would withdraw from the online DVD rental market and Netflix would not sell new DVDs. The lawsuit claims that this agreement caused Netflix subscribers to pay higher prices for online DVD rentals. Wal-Mart and Netflix deny: (1) that they entered into such an agreement, (2) that they have done anything wrong, (3) that the Plaintiffs have been harmed in any way, or (4) that the price of online DVD rentals was raised or inflated by any agreement between Wal-Mart and Netflix.

3. Why is there a Settlement with Wal-Mart but the lawsuit against Netflix is continuing?

Netflix has not agreed to settle and continues to believe that the lawsuit has no basis. Additional money may become available in the future as a result of a trial or future settlement with Netflix. On November 22, 2011, the Court granted Netflix’s Motion for Summary Judgment, resulting in the dismissal of the lawsuit. Plaintiffs can appeal this decision.

4. Why is there a class action?

In a class action, one or more people, called class representatives (in this case, Bryan Eastman, Amy Latham, Melanie Salvi, Stan Magee, Michael Orozco, Andrea Resnick, Liza Sivek, Michael Weiner, and Scott Caldwell) sue on behalf of people who have similar claims. All of the people with similar claims comprise the “class” and are referred to as “class members”, except for those who exclude themselves from the class. U.S. District Judge Hamilton in the United States District Court for the Northern District of California is in charge of this class action.

THE NETFLIX LITIGATION CLASS

5. How do I know if I am part of a Netflix Litigation Class?

The Netflix Litigation Class is as follows:

Netflix Litigation Class: Any person or entity in the United States that paid a subscription fee to Netflix anytime from May 19, 2005 to September 30, 2010.

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com

You may be included in both the Netflix Litigation Class and the Wal-Mart Settlement Class (*see* Question 9). You must have paid for a subscription to qualify for benefits. You are not included in the Litigation Class if you only had a free trial subscription.

6. What rights do I have in the Netflix Litigation Class?

Remain in the Netflix Litigation Class: If you wish to remain in the Netflix Litigation Class, you do not need to take any action at this time. If there is a recovery from Netflix, you may receive further instructions at that time.

Get out of the Netflix Litigation Class: If you wish to keep your individual right to sue Netflix about the claims in this case, you must exclude yourself from the Netflix Litigation Class.

To exclude yourself from the Netflix Litigation Class, you must send a letter that includes the following:

- Your name, address, and telephone number,
- The name of the case (*In re: Online DVD Rental Antitrust Litigation*, MDL No. 2029),
- A statement that you want to be excluded from the Netflix Litigation, and
- Your signature and date.

You must mail your exclusion request, postmarked no later than **February 14, 2012**, to:

Netflix Litigation Exclusions
P.O. 2602
Faribault, MN 55021-9602

Unless you exclude yourself from the Netflix Litigation Class, you give up the right to individually sue Netflix for the claims asserted in the lawsuit. If you have a pending lawsuit against Netflix, speak to your lawyer in that lawsuit immediately. You must exclude yourself from the Netflix Litigation Class to continue your own lawsuit against Netflix.

7. How and when will the Court decide who is right?

On November 22, 2011, the Court granted Netflix's Motion for Summary Judgment, resulting in the dismissal of the lawsuit. Plaintiffs can appeal this decision. Check the website at www.OnlineDVDclass.com to be kept informed of the trial schedule. If there is a trial, a jury will hear all of the evidence and then make a decision about whether the Plaintiffs have proven their claims against Netflix in the lawsuit. There is no guarantee that the Plaintiffs will win or that they will receive any money or benefits for the Netflix Litigation Class as a result of the trial.

8. Will I get benefits after the trial?

If the Plaintiffs obtain money or benefits as a result of a trial or future settlement with Netflix, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now and additional money or benefits may not become available. Important information about the case will be posted on the website, www.OnlineDVDclass.com, as it becomes available. Please register at the website to be kept informed about any future distributions.

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com

THE WAL-MART SETTLEMENT CLASS

9. How do I know if I am part of the Wal-Mart Settlement Class?

The Wal-Mart Settlement Class includes the following:

Any person or entity living in the United States or Puerto Rico that paid a subscription fee to rent DVDs online from Netflix anytime from May 19, 2005 to and including **September 2, 2011**.

You must have paid for a subscription to qualify for benefits. You are not included in the Wal-Mart Settlement Class if you only had a free trial subscription.

10. Why is there a Settlement?

Wal-Mart is not admitting that it did anything wrong, but both sides want to avoid the cost of further litigation. The Court has not decided in favor of the Plaintiffs or Wal-Mart. The Class Representatives and their attorneys think the Settlement is best for everyone who is affected. The Settlement provides the opportunity for benefits to Class Members.

11. What does the Settlement provide?

Wal-Mart has agreed to pay \$27,250,000 to compensate Class Members who file valid claims. The cash component of the Settlement will pay attorneys' fees and costs, payments to the Class Representatives, and administrative costs (see Question 20). Class Members can decide whether they want to request a cash payment or a Wal-Mart gift card. The amount of the cash payment or gift card will be based on the total number of valid claims filed (see Question 12).

Class Counsel will ask the Court to award the following: (1) attorneys' fees up to 25% of the Settlement Fund, plus costs that Class Counsel estimate at up to \$1.7 million, (2) administration and notice costs, and (3) \$5,000 for each of the Class Representatives (up to \$80,000 total which could include the class representatives from cases filed in California state courts). After these fees and costs are deducted from the Settlement Fund, the remaining amount will be equally divided amongst the Wal-Mart Settlement Class Members who file valid claims.

Please note that you can give your gift card to someone else but it cannot be resold.

The Settlement Agreement describes more details about the Settlement. You can find a copy of the Settlement Agreement at www.OnlineDVDclass.com.

12. How can I get benefits?

To ask for benefits, you need to complete and submit a Claim Form. Claim Forms are available at the website or by calling 1-877-389-4469. Please read the instructions carefully. Claim Forms can be completed and submitted online (for gift cards only) by **February 14, 2012** or mailed so that it is postmarked by that date, to:

Wal-Mart Settlement
P.O. 2602
Faribault, MN 55021-9602

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com

13. When will I get benefits?

Benefits will be distributed to Class Members after the Court grants “final approval” to the Settlement and after any appeals are resolved. The “final approval” hearing is scheduled to occur on March 14, 2012. If there are appeals to the final approval order, they can take time to resolve.

14. What are my rights in the Wal-Mart Settlement Class?

Remain in the Wal-Mart Settlement Class: If you wish to remain in the Wal-Mart Settlement Class and get benefits from the Settlement, you need to file a Claim Form (*see* Question 12).

Get out of the Wal-Mart Settlement Class: If you wish to keep your individual right to sue Wal-Mart about the claims in this case you must exclude yourself from *both* the Wal-Mart Settlement Class and the Netflix Litigation Class. However, you will lose the right to receive any benefits from the Settlement if you exclude yourself from the Wal-Mart Settlement Class.

To exclude yourself from the Wal-Mart Settlement Class, you must send a letter that includes the following:

- Your name, address, and telephone number,
- The name of the case (*In re: Online DVD Rental Antitrust Litigation*, MDL No. 2029),
- A statement that you want to be excluded from this Settlement, and
- Your signature and date.

You must mail your exclusion request, postmarked no later than **February 14, 2012**, to:

Wal-Mart Settlement Exclusions
P.O. 2602
Faribault, MN 55021-9602

By submitting an exclusion request, you will be excluded from the Wal-Mart Settlement Class.

If you want to bring your own separate lawsuit against Wal-Mart for the claims asserted in the lawsuit, you must exclude yourself from *both* the Wal-Mart Settlement Class and the Netflix Litigation Class. If you have a pending lawsuit against Wal-Mart, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *both* the Wal-Mart Settlement Class and the Netflix Litigation Class to continue your own lawsuit.

Remain in the Settlement Class and Object: If you have comments about or disagree with any aspect of the Settlement, including the requested attorneys’ fees, you may express your views to the Court. The written response needs to include:

- Your name and address,
- The name of the case (*In re: Online DVD Rental Antitrust Litigation*, MDL No. 2029),
- The reasons you object to the Settlement,
- Copies of all documents that support your objection,
- Whether you intend to appear at the Fairness Hearing (*see* Question 18), and
- Your signature.

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com

The response must be postmarked no later than **February 14, 2012** and mailed to:

COURT	CLASS COUNSEL
The United States District Court for the Northern District of California Courtroom 3 1301 Clay Street Oakland, CA 94612	Robert G. Abrams Gregory L. Baker Baker & Hostetler LLP Washington Square, Suite 1100 1050 Connecticut Avenue, NW Washington, DC 20036-5304
DEFENSE COUNSEL FOR WAL-MART	DEFENSE COUNSEL FOR NETFLIX, INC.
Lawrence DiNardo Paula W. Render Jones Day 77 West Wacker Drive Chicago, IL 60601	Jonathan M. Jacobson David H. Reichenberg Wilson Sonsini Goodrich & Rosati Professional Corporation 1301 Avenue of the Americas, 40th Floor New York, NY 10019

You will have no right to object to the Settlement if you exclude yourself from the Wal-Mart Settlement Class.

15. What am I giving up to stay in the Wal-Mart Settlement Class?

Unless you exclude yourself from *both* the Wal-Mart Settlement Class and the Netflix Litigation Class, you can't separately sue Wal-Mart, continue to sue Wal-Mart, or be part of any other lawsuit against Wal-Mart involving the legal issues in this case. You also will be bound by any decisions by the Court relating to the Settlement. The "Release of Claims" is described more fully in the Settlement Agreement and describes exactly the legal claims that you give up if you get benefits from that Settlement. The Settlement Agreement is available at www.OnlineDVDclass.com.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 9:00 a.m. on **March 14, 2012**, at the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, CA, 94612, in Courtroom #3. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.OnlineDVDclass.com. At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider how much to pay Class Counsel and Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com

18. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intent to Appear.” In your letter you must include the following:

- Your name, address, and telephone number,
- The name of the case (*In re: Online DVD Rental Antitrust Litigation*, MDL No. 2029),
- The name, address, and telephone number of any attorney(s) who will be appearing on your behalf at the Fairness Hearing,
- A brief statement detailing what you will be presenting to the Court, and
- Your signature.

You must mail your Notice of Intention to Appear which must be postmarked no later than **February 14, 2012** and mailed to:

COURT	CLASS COUNSEL
The United States District Court for the Northern District of California Courtroom 3 1301 Clay Street Oakland, CA 94612	Robert G. Abrams Gregory L. Baker Baker & Hostetler LLP Washington Square, Suite 1100 1050 Connecticut Avenue, NW Washington, DC 20036-5304
DEFENSE COUNSEL FOR WAL-MART	DEFENSE COUNSEL FOR NETFLIX, INC.
Lawrence DiNardo Paula W. Render Jones Day 77 West Wacker Drive Chicago, IL 60601	Jonathan M. Jacobson David H. Reichenberg Wilson Sonsini Goodrich & Rosati Professional Corporation 1301 Avenue of the Americas, 40th Floor New York, NY 10019

THE LAWYERS REPRESENTING YOU**19. Do I have a lawyer in this case?**

Yes. The Court has appointed “Class Counsel” to represent you and all Class Members: Robert G. Abrams of Baker & Hostetler LLP; Guido Saveri of Saveri & Saveri, Inc.; David Sorensen of Berger & Montague, P.C.; Joseph Tabacco, Jr. of Berman DeValerio; and Eugene Spector of Spector Roseman Kodroff & Willis, P.C.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com

20. How will the lawyers be paid?

The Court will decide how much Class Counsel will be paid. Class Counsel will ask the Court to award (1) attorneys' fees up to 25% of the Settlement Fund, plus costs that Class Counsel estimate at up to \$1.7 million, (2) administration and notice costs, and (3) \$5,000 for each of the Class Representatives (up to \$80,000 total which could include the class representatives from cases filed in California state courts). These awards and costs will be paid out of the cash part of the Settlement.

GETTING MORE INFORMATION

21. How do I get more information?

The Notice summarizes the lawsuit and the proposed Settlement. You can get more information about the lawsuit and Settlement at www.OnlineDVDclass.com. You may also write with questions to: Wal-Mart/Netflix Online DVD Class, P.O. 2602, Faribault, MN 55021-9602. You can also get a Claim Form at the website, or by calling the toll free number, 1-877-389-4469.

For More Information: Call 1-877-389-4469 or Visit www.OnlineDVDclass.com